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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/616,516 | 07/14/2000 | James L. Marsden | MED 2 1140 US | 7002 |

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| EXAMINER |
|---|
| CORBIN, ARTHUR L |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1761 | |

DATE MAILED: 03/12/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

AS-8

# Office Action Summary

| Application No. | Applicant(s) |
|---|---|
| 09/616,516 | MARSDEN ET AL |
| **Examiner** | **Group Art Unit** |
| ARTHUR L. CORBIN | 1761 |

*—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

☒ Responsive to communication(s) filed on 11-9-00 & 12-23-02.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

**Disposition of Claims**

☒ Claim(s) 1-19 is/are pending in the application.

Of the above claim(s) 16-19 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

**Application Papers**

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

**Attachment(s)**

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

**Office Action Summary**

1. Claims 16-19 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

Applicant's traversal submitted December 23, 2002, has been considered but is not convincing for the reasons set forth in paragraph Nos. 3 and 4, Paper No. 6. Further, the apparatus in claim 19 merely requires spraying and drying means and could be used to treat materials other than food, e.g. metals, plastics, wood materials.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-7, 9, 11, 13 and 15 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gutzmann et al (6,183,807, cols. 4, 5 and 13-16).

Gutzmann et al discloses spraying a food product, e.g. hot dogs, on a moving production line with an antimicrobial or sanitizing solution including 1000 ppm of a blend of carboxylic and percarboxylic acid, e.g. acetic and peracetic acid, for a period of 30 seconds and then applying dry heat to the sanitized food product, e.g. hot dogs.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutzmann et al (6,183,807).

Finding the optimum spraying time would require nothing more than routine experimentation by one reasonably skilled in this art.

6. Claims 2, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutzmann et al (6,183,807) in view of Kurschner et al (WO 95/10191).

It would have been obvious to rinse the sanitized food product in Gutzmann et al to remove excess antimicrobial solution and then package the food product since it is well known to treat a food product with peracetic acid solution to sanitize the product, then rinse with water and then package, as evidenced by Kurschner et al (page 2-6).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutzmann et al (6,183,807) in view of Merk et al.

It would have been obvious to recirculate the peracetic acid containing sanitizing solution after treating the food product in Gutzmann et al since it is old to recirculate

peracetic acid decontaminating solution, after treating a food product, e.g. hot dogs, with said solution, as evidenced by Merk et al (col. 11, line 63 to col. 12, lines 1-5).

8. Claims 1, 2, 4-9 and 12 are also rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kurschaner et al (pages 2-6).

Kurschner et al discloses sanitizing fowl by spraying for 1-5 minutes with a peracetic acid solution having a concentration of 1000-ppm peracetic acid. Subsequently, the fowl is rinsed with water and then packaged in plastic bags.

9. Claims 3 and 13-15 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Kurschaner et al in view of Gutzmann et al (6,183,807).

It would have been obvious to apply dry heat to the sanitized fowl in Kurschaner et al since it is well known to sanitize poultry with peracetic acid spray and subsequently treat with dry heat, as evidenced by Gutzmann et al (cols. 4, 5 and 13-16).

10. Claim 10 is also rejected under 35 U.S.C. 103(a) as being unpatentable over Kurschaner et al in view of Merk et al, is applied as in paragraph No. 7 above.

11. Claims 1, 6 and 9-11 are further rejected under 35 U.S.C. 102(e) as being clearly anticipated by Merk et al (col. 11, line 63 to col. 12, line 25).

Merk et al discloses spraying hot dogs and other meat products or carcasses with peracetic acid solution to decontaminate the food while being transported on a conveyor system. Subsequently, the peracetic acid solution is recirculated.

12. Claims 4, 5, 7 and 8 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Merk et al.

Finding the optimum peracetic acid solution concentration and optimum treatment time would require nothing more than routine experimentation by one reasonably skill in this art.

13. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merk et al in view of Kurschaner et al.

Kurschner et al is applied as in paragraph No. 6 above.

14. Claims 3, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merk et al in view of Gutzmann et al.

It would have been obvious to apply dry heat to the decontaminated food product in Merk et al since it is old to do so after sanitizing food products with peracetic acid, as evidenced by Gutzmann et al (col. 16, lines 41-59).

15. Claim14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Merk et al in view of Gutzmann et al as applied to claims 3, 13 and 15 above, and further in view of Kurschaner et al.

Kurschaner et al is applied as in paragraph No. 6 above.

16. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers

for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
March 10, 2003

ARTHUR L. CORBIN
PRIMARY EXAMINER
3-11-03